duties, and that the only question is whether he has complied with the statutory directions set out in section 94.

True the Settlement Officer had to inquire, and no doubt he did, in his administrative capacity, but he had not to conduct anything in the nature of a judicial or quasi-judicial inquiry.

On the other hand if it is contended that his duties are quasi-judicial in nature, there was sufficient compliance by the Settlement Officer of the procedure and he gave due notice, the appellants having been given the opportunity to present their claims, which in fact they did.

The material before him did not satisfy him that there was customary rights, a view with which I fully agree.

I can find nothing irregular or unlawful in the proceedings whereof complaint is made by the appellants.

As was said by Lord Shaw of Dunfermline in *Local Government Board* v. *Arlidge*[8] of the authority there concerned it:

"must do its best to act justly and to reach just end and by just means. If a statute prescribes the means it must employ them. If it is left without express guidance it must still act honestly and by honest means."

It seems to me that the Settlement Officer acted very properly and fairly. No exception can be taken whatever to what he has done.

But where there is a rehearing by way of evidence *de novo* before the District Court in the presence of the appellants or their representatives, I do not think that it lies in the mouth of the appellants to say that there was a denial of natural justice, assuming however in favour of counsel for the appellants that there was defect at the earlier stage. Such defect, if any, has, in my judgment been cured by the later proceedings.

For these reasons I am in full agreement with the Magistrate both in his findings of fact and in his conclusions of law. There is no substance whatever in the other grounds and this appeal fails and is accordingly dismissed with costs.

Appeal dismissed.

Solicitors: *Ibrahim & Co.*

TIONG HIN REALTY SDN. BHD. v. CHAIRMAN, MAJLIS BANDARAN, KUANTAN

[O.C.J. (Syed Othman J.) February 14, 1974]
[Kuantan — Originating Motion No. 6 of 1973]

Local Government — Rating — Annual value — Annual rate — Shophouse destroyed by fire — Rebuilding — Principles of valuation — Method of valuation — Comparative method.

A two storey building whose annual value had been $900 and the annual rate $187 was destroyed by fire in 1966. It was rebuilt in 1970 at the cost of $20,000: the party walls were reinforced and additional party walls were put up and floor areas were increased. It was not in dispute that the premises had been let at a rental of $280 per month for a period of 3 years with an option to renew on the same rental for a further two years. The Majlis Bandaran had assessed the annual value of the property at $6,600 and the annual rate $1,386. On appeal,

Held: (1) considering the cost of rebuilding it was difficult to accept that in estimating the gross annual rent it would be said that the appellant should be able to recover this expenditure in about 3 years ($6,600 x 3). By any standard, legal or economic, this figure was too high;

(2) in the circumstances of the case as the real rent was $280 per month the proper annual value of the premises was $3,360.

[Editorial Note: An appeal against this decision was lodged by the Majlis Bandaran, but was later withdrawn.]

Cases referred to:-

(1) *Overseas Chinese Banking Corporation Ltd.* v. *Commissioner of Federal Capital of Kuala Lumpur* [1963] M.L.J. 294.

(2) *Robinson Brothers (Borneo) Ltd.* v. *Houghton and Chester-le-Street Assessment Committee* [1937] 2 K.B. 445, 468.

ORIGINATING MOTION.

V. Balendran for the appellant.

G. Singham for the respondent.

Syed Othman J.: This appeal is against the decision of the Chairman, Majlis Bandaran, Kuantan in assessing the annual value of shop house No. 39, Jalan Wall, Kuantan at $6,600 and the annual rate at $1,386.

The shop house originally was a two storey building similar to most of those which adjoin it now. Its annual value had been $900 and the annual rate $189, the same as those of the existing adjoining shop houses. On 18th April, 1966 the whole shop house was destroyed by fire. The appellant rebuit the shop house in 1970 at the cost of $20,000: the party walls were reinforced and additional party walls were put up, increasing to 2,200 square feet the floor area of the ground floor and to 1,060 square feet the floor area on the first floor. It is not disputed that the premises have been let at a rental of $280.00 for a period of 3 years with an option to renew the lease on the same rental for a further period of 2 years.

In assessing the annual value of the property, the valuation committee of the Town Council relied on the advice of a valuation officer. It treated the property as new and not subject to the Control of Rent Act. It assessed the annual value at $7,200. The appellant objected to this assessment. On the advice of the valuation officer, it was reduced to $6,600. But the appellant says it is still too high, and hence the appeal.

The main grounds of appeal are in effect that the Town Council was wrong in having assessed the property at the fictitious annual value of $6,600 and that the annual value should have been assessed at $3,360.

Encik Mohammed Nawai, the Regional Director of Valuation, Malaysia, for South Region, in his affidavit, says that in arriving at the estimate of the fair annual value of the property, he adopted the most common and acceptable method of valuation, called the comparative method; by this method he gathered the evidence of rental values of similar type of properties in the town in Jalan Bukit Ubi, Jalan Haji Abdul Aziz and Jalan Besar. As authority for this method of valuation counsel for the Town Council has referred me to *Overseas Chinese Banking Corporation Ltd.* v. *Commissioner of Federal Capital of Kuala Lumpur*[1] and to *Robinson Brothers (Borneo) Ltd.* v. *Houghton and Chester-le-Street Assessment Committee*,[2] cited in the former case. In *Robinson Brothers'* case Scott L.J. summarised 11 fundamental and established principles of valuation. For the purpose of the present appeal I do not think there is any need for me to set them out. They have been set out in full in *Overseas Chinese Bank's* case. I shall refer to those principles which are relevant to this appeal and consider whether in coming to its valuation the Town Council has properly followed these principles.

"Annual value" is defined in section 2 of the Town Boards Enactment (F.M.S. Cap. 137) to mean the estimated gross annual rent at which it might be reasonably expected to let from year to year. To my mind this means that the general test that is required to be applied is the sum at which a reasonable and prudent landlord is willing to rent the premises considering the locality and the intrinsic value of the property.

Principle 2 by Scott L.J. says that the best evidence is the actual rent at which the property or the actual rents at which similar properties in similar economic sites are let so that they are truly comparable.

In his affidavit, the director of valuation states that similar properties to the property which was being assessed are those in Jalan Bukit Ubi, Jalan Dato Haji Abdul Aziz and Jalan Besar. While the properties may be similar, they are, in my view ,not in similar economic sites envisaged by Scott L.J.'s second principle. All the areas taken into account particularly the area in which the properties referred to in Jalan Besar are situated, are recently built-up; the roads are wide, and they all look new. They are clearly in different economic sites. The property in question is in the old part of the town where generally the buildings look shabby and out of this era. The valuation officer also does not appear to have regard to the fact that the property in question is along the row of shop houses, the valuation of most of which is what had been the value of the property before it was burnt down i.e. $900. I do appreciate that there are factors which tend to raise the rent of the property in a particular economic site, as for example in the present case, the increase in the floor area and the improved floor; but nonetheless the facade and most of the party walls of the building in question remain the same as they were before; and the increase in the floor area is at the back, which cannot, in my opinion, enhance the economic value of the shop house as if it was in a better economic area. The extra floor space cannot be used for business purpose in the strict sense of the words, but can only be used for storage or living accommodation. Looking at the building from the street fronting it, it looks the same as any other old building along the street. I can see nothing fetching in its front compared with the new buildings in the other sites which have been used for comparison.

Considering all this I do not think it is proper to have valued the property as if it were of the same kind and in the same economic site as the properties which had been taken into account.

It has been said that the object of ascertaining the real value of the property is economic but not legal. Looking at the whole question from the economic aspect, it has been shown here that the appellant repaired the building at the undisputed cost of $20,000. Considering this cost, I find it difficult to accept that in estimating the gross annual rent it can be said that the appellant should be able to recover this expenditure in about three years ($6,600 x 3). By any standard, legal or economic, I feel that this figure is too high.

Gill J. (as he then was) in *Overseas Chinese Bank's* case after considering the principles in *Robinson Brothers'* case said:

> "It is clear that although the tenant is imaginary, conditions in which his rent is to be determined cannot be imaginary".

The evidence which the Town Council has produced as to these conditions, I find, if not imaginary, does not relate to the very property which was being assessed, as it did not take into account the value of properties in the same economic site. The appellant on the other hand, has adduced incontrovertible evidence as to the rent which he really gets from the property. There is nothing to show that the appellant received "tea" money in addition to the rent agreed upon, and that the tenancy agreement is a sham. If in fact it could be shown that "tea" money was received, I think it would be justified to hold that the rent received does not reflect the true value of the property. In the absence of this evidence, the rent agreed upon falls under what was stated by Scott L.J. in his principle 9, "The true rent is often called 'market value' which in the true sense means the highest value that can be obtained". From the evidence the Town Council itself has accepted that $280 is the real rent. This is therefore the highest value as stated by Scott L.J. in principle 9. I do not therefore think that it would be proper for the Town Council now to turn round and say that this cannot be the highest value that can be obtained for the property. I would therefore hold that the proper annual value of the property is $3,360.

Order accordingly.

Solicitors: *Maxwell, Kenion, Cowdy & Jones; Ibrahim, Tan & Abdullah.*